

REMARKS

In the application claims 1-8 and 24-25 remain pending. Claims 9-23 and 26-28 are cancelled in response to the restriction requirement imposed by the Examiner. Claims 1, 3-6 and 24-25 stand rejected as being purportedly anticipated or obvious in view of Huard, U.S. Patent No. 5,148,937. Claims 2, 7 and 8 stand objected to as being dependent upon a rejected base claim. Consideration of the amendments to the claims made hereby, and reconsideration of the objections to and rejections of the claims are respectfully requested.

Allowable Subject Matter

Claims 2, 7 and 8 stand objected to as being dependent upon a rejected base claim, but the Examiner has indicated that those claims would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Accordingly, Applicant has rewritten claims 2 and 7 in independent form, such that they should now be deemed allowable. Claim 8 is dependent upon claim 2. Insofar as claim 2 has been rewritten in independent form, Applicant respectfully submits that claim 8 should also be deemed allowable.

Rejections over Huard, U.S. Patent No. 5,148,937

Claims 1, 4, 5, 6, 24 and 25 stand rejected under 35 U.S.C. 102(b) as being purportedly anticipated by Huard. Claims 3, 5 and 6 stand rejected under 35 U.S.C. 103(a) as being purportedly obvious in view of Huard. Applicant respectfully traverses the substantive bases for rejection of the claims.

Huard discloses a bottle cap with a perforating spike formed in the cap to permit piercing of a protective membrane, such as a foil membrane, that may seal the bottle on

which the cap is used. While the cap in Huard is primarily intended to provide a convenient, integrated mechanism for piercing and removal of a protective membrane, Huard also notes in passing that spikes can be formed in such a manner as "to allow fixation of the cap in a semi vertical position to the wall of the neck whenever desired. This permits to put away the cap in a clean and easy-to-find manner." (Huard, col. 3 lines 10-15; Fig. 3.)

Embodiments of Applicant's invention provide a cup lid having a mechanism to temporarily retain the lid while holding it away from the cup to which the lid is attached. For example, Applicant's lid can be used for a coffee cup, whereby a user can readily access the contents of the cup, such as to add cream or sugar to the coffee, without having to set the lid down on another surface or hold the lid manually.

Applicant respectfully submits that Huard does not disclose or make obvious Applicant's claimed invention. Claim 1, as amended, requires that the lid be retained such that the top surface of the lid is maintained substantially outside the circumference of the cup rim when the cup rim passes through the first and second apertures. Such a configuration is illustrated in Applicant's Figures 4-5, and operates to facilitate access to the cup interior. By contrast, the configuration in Huard holds the bottle cap directly above the bottle opening. (See Huard, Fig. 3.) This is consistent with the purpose described in Huard, which is to **provide a means for storing the cap** -- in which maintaining the cap directly above the bottle opening minimizes the area occupied by the bottle when stored. However, this provides comparatively limited and difficult access the interior of the bottle, and is not suitable for Applicant's entirely different application of temporarily retaining the cup lid while **providing ready access to the**

interior of a cup. Thus, Applicant respectfully submits that claim 1, as amended, should be deemed patentable over the prior art Huard reference.

Applicant's claim 3 is dependent upon claim 1, and further requires that the first and second apertures are parabolic in shape. The Office Action concedes that Huard does not disclose or suggest the use of a parabolic aperture shape, but contends that it would have been obvious to make the apertures of a parabolic shape since such a modification would have involved a mere change in the shape of a component, and a change in shape is purportedly generally recognized as being within the level of ordinary skill in the art. However, Huard not only fails to disclose Applicant's parabolic aperture shape, but in fact **teaches against it**. The primary purpose of the slots in Huard are to permit piercing of a protective foil. Huard explains that,

In accordance with this invention, at least one and preferably two open slots 21, 23 are made in the skirt 15, each slot extending at an angle from the bottom edge 17 of the skirt 15. . . . **As is clearly shown in FIG. 1, each slot 21, 23 makes the skirt to define a spike 25, 27, that can be used to perforate and remove the protective foil 9. . . .**

(Huard, col. 2 lines 52-63 (emphasis added).) Thus, Huard requires that the slots form spikes, for use in piercing a protective membrane. By contrast, Applicant's parabolic apertures **eliminate** any spike or pointed edge from the lower surface of the cup lid. Rather, the parabolic shape of Applicant's apertures permits easy attachment and removal of the cup lid to the cup rim, particularly in a position permitting ready access to the cup interior -- towards achieving the entirely different goals of Applicant's invention.

Since Huard expressly teaches away from Applicant's parabolic aperture shape, Applicant submits that a parabolic aperture shape is not at all obvious, and claim 3

should be deemed allowable. Moreover, claim 3 is dependent upon claim 1. To the extent that claim 1 is deemed allowable, claim 3 should likewise be deemed allowable.

Inasmuch as dependent claims 4 - 6 also merely serve to further define the subject matter of claim 1, which itself should be deemed allowable, claims 4 - 6 should be deemed to patentably distinguish over the cited prior art. Reconsideration and withdrawal of the rejections of claims 4 - 6 and allowance thereof, are respectfully solicited.

Method claims 24 and 25 stand rejected as being purportedly anticipated by Huard. The rejection cites Figures 1 and 3 of Huard, without any explanation or application of the prior art **apparatus** to the elements of Applicant's **method** claims 24 and 25. Applicant respectfully submits that Huard does not at all disclose or even suggest the method claimed by Applicant's claims 24 and 25. To the extent the Huard reference describes any methods at all, it is directed to: (1) the use of a cap to remove a protective membrane; and (2) the storage of a cap above the neck of a bottle. By contrast, Applicant's claims 24 and 25 are directed to the entirely different method, for using a cup with removable lid, in which the contents of the cup are accessed while the lid is hung from the rim of the cup.

Specifically, Huard describes a "cap" for a "container having a neck." (See col. 3 lines 26-27.) By contrast, claim 24 addresses a method for using a **cup** having a removable **lid**. Thus, Huard does not describe any method for using a cup with removable lid -- as specifically recited by claim 24.

Furthermore, Applicant's claim 24 requires the step of "hanging the lid on the rim of the cup such that the majority of the area circumscribed by the rim of the cup is

accessible." By contrast, to the extent Huard can be deemed to disclose a step of hanging a lid on the rim of a cup at all, it maintains the "lid" directly above the container opening. (See, Huard Fig. 3.) In so doing, it does not maintain the majority of the area circumscribed by the "rim of the cup" (or in the case of Huard, the wall of the neck) accessible.

Applicant's claim 24 further recites the step of accessing contents within the cup, after hanging the lid on the rim of the cup. Huard does not disclose or suggest the step of accessing the contents of a container while a lid or cap is hanging thereon. To the contrary, Huard teaches away from Applicant's claimed invention because it discloses attaching a container cap to the neck of the container only "to put away the cap in a clean and easy-to-find manner." (Huard, col. 4 line 14-15.) In other words, Huard attaches the cap to the neck of a container for **storage** -- not during **use** of the container.

For the above reasons, Applicant respectfully submits that method claim 24 should be deemed patentable over Huard. Since claim 25 is dependent upon claim 24, claim 25 should likewise be deemed patentable as dependent upon a patentable base claim.



CONCLUSION

Applicant respectfully submits that the foregoing comprises a complete response to the Office Action of March 23, 2006, and that the application as a whole is now in *prima facie* condition for allowance. Entry and consideration of this response, toward further consideration and allowance of the application, are respectfully solicited.

The Commissioner is authorized to charge any fee deficiency or credit overpayment to deposit account 50-2428 in the name of Greenberg Traurig.

Should anything further be required, a telephone call to the undersigned at (312) 456-8400 is respectfully requested.

Respectfully submitted,
GREENBERG TRAURIG, LLP


Dated: July 26, 2006

Brad R. Bertoglio
One of Attorneys for Applicant

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail, pursuant to 37 C.F.R. §1.8, in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date set forth below.

Dated: July 26, 2006



Brad R. Bertoglio